

IN SENATE OF THE UNITED STATES.

APRIL 14, 1848.

Submitted, and ordered to be printed.

Mr. ASHLEY made the following

REPORT:

[To accompany bill S No. 218.]

The Judiciary Committee, to whom was referred the memorial of the Central Railroad and Banking Company of Georgia, ask leave to report:

That it appears that the Central Railroad and Banking Company of Georgia, in the year 1836, commenced the construction of a railroad, between the city of Savannah and the city of Macon, in the said State, and finished the same in the month of December, 1843, a road of one hundred and ninety miles in length.

That, at various times, the company imported railroad iron, which was laid down permanently for use; and, between the 14th April, 1842, and the 14th February, 1843, they imported a quantity of railroad iron, the duties on which amounted to \$22,853 20, for which the company gave six several bonds, which fell due on the 3d March, 1843; that said iron was necessary for, and actually used in, the construction and completion of the said railroad, begun in 1836, and carried on without intermission to the time of its completion, in December 1843, and was actually laid down thereon, within the period aforesaid.

That the company claim that they are entitled to the cancellation and delivery up of the said bonds, because they were given to secure the duties on railroad iron, which was imported prior to the 3d March, 1843, for a railroad, the construction of which was in progress on the 11th day of September, 1841, was necessary to the completion of the said railroad, and was actually and permanently laid down on the same, and they accordingly furnished to the Secretary of the Treasury the evidence and certificate that it had been so laid down, on the 1st of December, 1843, and asked that their said bonds might be cancelled and delivered up.

That this application was declined by the Secretary, on the ground that the iron, although imported before the 3d of March, 1843, was not laid down until after that period; and the matter now awaits the decision of Congress.

The committee have looked into the several acts, and submit to the Senate the following result:

The act of 14th July, 1832, provides that, on proof to the satisfaction of the Secretary of the Treasury, that any railroad iron, imported for the purpose of being applied to the construction of any railroad, by any incorporated company, has been actually and permanently laid down on any such railroad, then, in that case, he may allow a drawback on such iron so laid; and it was provided that such bonds should be extended to three years from the time of importation.

It is obvious that railroad iron, imported under the provisions of this act, was entitled to exemption from duties, and the importers to a cancellation of their bonds. By the act of 11th September, 1841, the act of 1832 was repealed; but it was provided that such repeal shall not operate, nor shall any duties be imposed on any railroad iron, which shall be imported under the provisions of the said act, prior to the 3d March, 1843, and laid down on any railroad or inclined plane, of which the construction has been already commenced, and which shall be necessary to complete the same.

The effect of this proviso was to leave the act of 1832 in full operation, as to railroad iron imported prior to the 3d March, 1843.

The act of 1842 subjects railroad iron to duty, but provides that iron imported prior to the 3d March, 1843, shall be entitled to the benefits of the provisions of existing laws, exempting it from the payment of duty, on proof of its having been actually and permanently laid down, for use on any railway or inclined plain, prior to 3d March, 1843; and that all such iron, imported from and after the date aforesaid, shall be subject to the duty of rolled iron.

There is an obvious inconsistency in the terms of this proviso, if they are literally interpreted. It declares that iron, *imported* prior to 3d March, 1843, shall be free from duty; but to entitle the importer to such an exemption, it must be *laid down* before the 3d March, 1843. In the opinion of the committee, this latter requisition is a nullity. If it be considered as a *condition*, it is a familiar doctrine of the law, that a condition, which is repugnant to the nature of the thing granted, cannot stand. If, as a *saving*, or *proviso*, the same rule holds. That it is so repugnant is obvious. It extends the benefit of those acts, which exempt railroad iron from duty, to all iron *imported* prior to the 3d March, 1843, and then destroys the provision by limiting it to such iron as shall also be *laid down* before that time. The committee think that Congress could not intend to say to the importer, railroad iron, if imported on the 2d March, 1843, shall be exempt from duty; but, unless permanently laid down before the 3d of the same month, it shall be liable to the duty: or, in other words, to grant an exemption on terms which would render it impossible for the importer to avail himself of it.

The act of 1842 secured to importers of railroad iron, "the benefits of existing laws." The laws referred to, were those of 1832 and 1841, which allowed three years from the time of importation, within which to lay down the iron. The act of 1842 limited the time within which railroad iron might thereafter be imported, so

as to entitle the importer to the benefits of those laws to the 3d of March, 1843; and upon railroad iron imported within that time, it left those laws to operate. The act was passed on the 30th August 1842. It thus gave six months for future importations, that is, to the 3d March, 1843, and "the benefit of existing laws" to iron so imported: that benefit was the allowance of three years within which to lay down the iron. Unless this was allowed, the importer would derive no benefit whatever from the "existing laws" of 1832 and 1841, for the time of importation was regulated by the act of 1842. The immediately succeeding words of this act confirm this interpretation, for it proceeds to declare that all such iron *imported*, (not imported and *laid down*, or imported before, but laid down after,) *from and after* the date aforesaid, shall be subject to the duty of rolled iron, which necessarily excludes from the duty imposed by that act, railroad iron *imported before*, but *laid down after*, the 3d March, 1843.

The iron, in this case, was imported before the 3d March, 1843, and was laid down within the time allowed by existing laws, to the benefit of which the memorialist was entitled; and of the fact of its having been so laid down, due notice was given to the Secretary of the Treasury.

The committee, therefore, think the memorialists is entitled to relief, and accordingly report a bill.

